

Civil No.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION _____

GERALD ARMSTRONG

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF
LOS ANGELES, CENTRAL DISTRICT

Respondent.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation

Real Party in Interest

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JOSEPH J. CLERK

Honorable David Horowitz

Case No. BC 052395

PETITION FOR WRIT OF MANDATE [C.C.P. Sec. 1085;

CALIFORNIA RULES OF COURT, RULE 56]

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CHURCH OF SCIENTOLOGY
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Real Party in Interest

) PETITION FOR
) WRIT OF MANDATE

) [C.C.P. Sec. 1085;
) California Rules of
) Court, Rule 56]

TO: THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES
OF THE COURT OF APPEAL OF THE SECOND APPELLATE DISTRICT,
DIVISION _____, OF THE STATE OF CALIFORNIA:

I. ISSUES PRESENTED FOR REVIEW

1. Is public policy violated by contracts calling for payments of money to persons to not voluntarily attend trials, not be amenable to process service, not sign declarations, and not be interviewed by adverse litigants?

2. Do civil litigants have the same right to due process and investigation as do governmental entities?

3. May a trial court, on Demurrer, refuse to rule whether or not a contract violates public policy?

4. May a court rewrite a contract excising paragraphs that violate public policy?

II. WHY EXTRAORDINARY RELIEF IS NECESSARY

No guarantee of due process is greater than the right to investigate, present witnesses, and cross-examine. As set forth in the herein Petition, Real Party in Interest, **Scientology**, has been paying money to potential adverse witnesses not to voluntarily attend any trial, not to sign declarations, nor be interviewed by any adverse litigants. Further the witnesses are not "to be amenable to service of process." Defendant Armstrong, signed one of these agreements when he settled a Cross-Complaint against Scientology for harassment (see Scientology v. Armstrong [1991] 232 CA 3d 1060). ¹ Armstrong, thereafter, did voluntarily sign declarations for adverse litigants, and Scientology followed by commencing the herein action seeking damages and injunctive relief, preventing any future cooperation with adverse litigants.

Such a bold contractual concept by Scientology, if approved, lurks as a computer virus ready to spread office to office, to all individual and/or corporate defendants who may wish to quickly pay sums of money to potential adverse witnesses in order to hinder future litigation. ² Petitioner asks this court to stop the "bug."

¹ Hereafter referred to as Armstrong I.

² Not all of these contracts arose out of settlement (p. 226). If valid, anyone could pay anyone to try to avoid testimony.

As set forth in the herein Petition, Scientology's request for a Preliminary Injunction was denied as to governmental agencies, but granted as to civil litigants.³ On Demurrer, the trial court refused to rule whether the contract violated public policy (p. 424).

As a result, until relief from this court, all current and future litigants will be unable to interview Armstrong, and will be hindered in attempts to find out his information about Scientology.⁴ Further, the pending action will deter others from testifying who have signed similar contracts.

Justice cannot be served by contracts which prevent witnesses from appearing at trial and neither Petitioner, nor the courts, should have to endure the cost in time and money of this lawsuit intending to prevent Petitioner from being a witness. Petitioner has no other remedy to prevent the current obstruction of justice that continues absent relief from this court. Fogarty v. Superior Court (1981) 117 Cal.App.3d 316,320. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute irreparable injury." Elrod v. Burns (1976) 427 US 347, 373-74. This court should grant this relief in order to send a message to attorneys and parties concerning attempts to contract to silence a witness and/or the non-assistance to adverse litigants.

³ The court further refused to grant the Preliminary Injunction requiring Defendant Armstrong to not be "amenable to service of process."

⁴ Petitioner has ordered the transcript of the July 2, 1992 hearing on Demurrer and will file it with this court when received.

III. PETITION FOR WRIT OF MANDATE

Petitioner alleges:

1. On August 2, 1983, the Church of Scientology commenced Armstrong I against Gerald Armstrong alleging he had stolen from Scientology numerous documents (p. 70). In 1984, Judge Paul Breckenridge, Jr. ruled in favor of Defendant Armstrong, finding:

"As indicated by factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas and Howard Schomer to be credible, extremely persuasive...The picture painted by these former dedicated Scientologists, all of whom were intimately involved with ...the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse. (Memorandum of Intended Decision, pp. 123-124)

" . . . In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. (Memorandum of Intended Decision, pp. 124-125) ⁵

⁵ Judge Breckenridge noted Scientology's fraud against the public, history of hiding evidence, including using a shredder (Memorandum of Intended Decision, p. 117), and that Scientology engaged in "a somewhat sophisticated effort to suppress (Howard Schomer) testimony...it is abundantly clear they sought to entice him back into the fold and prevent

2. Following this judgment for Armstrong on Scientology Complaint, a trial was to commence on a separate Cross-Complaint in Armstrong against Scientology for harassment. A settlement was then made of this action that is the subject of this Petition (p. 74). The settlement called for Armstrong, in return for payments of money, to, in addition to dismissing his Cross-Complaint, return Scientology documents, not cooperate, voluntarily testify for, or assist any adverse Scientology litigant, governmental or otherwise, and not be amenable to process service. The settlement also called for Armstrong not to oppose the appeal of the Breckenridge decision and, most sinisterly, had side agreements wherein Scientology agreed to limits of damages on retrial of \$25,000 (p. 141), and when paid, to secretly reimburse Armstrong (pp. 143-144). In other words, a plan to eliminate the Breckenridge decision preventing collateral estoppel in other litigation, and replacing it with

his testimony" (Memorandum of Intended Decision, p. 15). Judge Breckenridge also ruled Armstrong was free to discuss his Scientology experiences (Memorandum of Intended Decision, p. 104), and thereafter Scientology commenced using these subject contracts to silence witnesses.

Some of the valuable testimony of Armstrong attempted to be secreted by the contract appears also in Judge Breckenridge's decision. Armstrong located documents in Scientology founder L. Ron Hubbard's archives indicating representations made by Hubbard and Scientology were lies. When he tried to prevent further deceit on the public, he was ordered to undergo a "security check" (pp. 108-109). He was declared a "suppressive" person, was falsely accused of crimes, and made subject to Scientology's "fair game" doctrine -- may be "tricked, cheated, lied to, sued, or destroyed" (p. 113). Armstrong had extensive knowledge of the "covert and intelligence operations" carried out by Scientology against its enemies (p. 114). He was then harassed, followed, surveilled, assaulted, struck by a car, attempted to be hit on a freeway, and trespassed upon by Scientology (pp. 113-115).

a public relations victory for Scientology. ⁶ A "rigged" trial, following a "rigged" appeal. ⁷

3. Finding Armstrong executing declarations on behalf of adverse Scientology litigants, Scientology, pursuant to paragraph 20 of the contract which conferred jurisdiction on Judge Breckenridge to enforce the settlement agreement (pp. 88-89), sought in Armstrong I, a restraining order preventing further voluntary testimony. On December 23, 1991, Judge Bruce Geernaert, who replaced the retired Judge Breckenridge, found (pp. 146-224), after reviewing the records and file, that Judge Breckenridge had ordered the settlement agreement filed with the court, but despite such orders, Scientology never gave the settlement agreement to Judge Breckenridge and that the Judge never read it. Thus it was never made an order of the court that could be enforced, and the subsequent dismissal ended the court's jurisdiction. In reaching these conclusions, Judge Geernaert made the following findings:

"And I make sure that it is the kind of clear and concise order that can be the subject of a contempt proceeding. So my belief is Judge Breckenridge, being a very careful Judge, follows about the same practice

⁶ The P.R. even appears in Plaintiff's Opposition to Demurrer where, in opposition to Breckenbridge's findings, it states Armstrong "staged a raid on Church facilities by governmental officials on the basis of the forged documents planted in Church files, in getting Church members to file lawsuits on the basis of naked allegations, insupportable by any evidence..." (Plaintiff's Opposition to Defendant's Demurrer, p. 37), and refers to Breckenridge's ruling as the "one-sided decision" (Plaintiff's Opposition to Demurrer, footnote 8, p. 44).

⁷ This plan fell awry recently as the Appellate Court confirmed the Breckenridge decision anyway. Scientology v. Armstrong (1991) 232 CA 3d 1060.

and if he had been presented with the whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the -- I have seen -- I can't say -- I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that, okay, the case is not settled.

I know we like to settle cases. But we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest.

So basically, I have to conclude based on the record that there was no order; simply, he wasn't presented the order. He was not asked to order its performance. He didn't order its performance (p. 200)."⁸

4. Thereafter, Scientology filed the instant action (p. 425)⁹ in Marin County and obtained a T.R.O. by Judge Dufficy, who stated he was not addressing the merits, but keeping the status quo until he could have a full hearing (pp. 68-69).¹⁰ Armstrong II was transferred back to Los Angeles, where Department 1 assigned it as a related case back to Judge Geernaert. Scientology filed a 170.6 on Judge Geernaert (p. 63, footnote 14), and the Preliminary Injunction was then assigned to Judge Ronald Sohigian. Judge Sohigian granted the Preliminary Injunction in part and denied it in part. He would not enforce

⁸ Armstrong contends these findings are collateral estoppel. Monterey Club Mtg. Ass'n. v. Morgan, 230 Cal. App.3d 1465, 281 Cal.Rptr.880; Brown v. Rahman, 231 Cal. App.3d 1458; Cresino v. Fire Insurance Exchange, 215 Cal.App.3d, 814, 264 C.R. 30; Torrey Pines Bank v. Superior Court, 216 Cal.App.3d, 813, 265 C.R. 217 (A voluntary dismissal prevents re-litigating the same issues as an affirmative defense brought in another action.)

⁹ Hereinafter, Armstrong II.

¹⁰ Scientology falsely advised the trial court that Judge Dufficy approved the contractual provisions on the merits (Plaintiff's Opposition to Defendant's Demurrer, p. 40).

the Injunction against adverse Scientology litigants who were governmental agents, nor enforce the "not be amenable to service of process" clause. However, he impermissibly enjoined Armstrong from signing any declarations in a civil litigation and from voluntarily attending any trials in civil litigation on behalf of adverse Scientology litigants (288-289). ¹¹

5. On July 2, 1992, Petitioner's Demurrer on the grounds that the contract violated public policy was heard before Honorable Judge David Horowitz. Judge Horowitz overruled the Demurrer, stating that he was not ruling on the issue of public policy at the time, and believed the issue is one of proof (p. 424). As the contract and the side agreements were before the court, the proof was clearly more than sufficient. It is from this non-ruling that Petitioner seeks the assistance of this court, i.e., an order directing the trial court to address the

¹¹ This restriction greatly hampers and burdens numerous pending cases throughout the United States, and is one of the reasons why irreparable harm is occurring pending the court's ruling for this Petition.

Judge Sohigian refused to follow Law and Motion Manual 134 which requires a Demurrer be heard prior to a Motion for Preliminary Injunction, or assign both motions to the same judge (p. 56, footnote 1).

After the Preliminary Injunction, Petitioner waited first to see what the trial court would do with these issues on Demurrer to the Complaint. Since the court refused to rule on the issue on Demurrer (p. 424), An appeal will be filed. However, if this court waits until the appeal process takes it long course, irreparable injury will be incurred by numerous adverse Scientology litigants. For these important public policy reasons, Petitioner asks this court to grant this Petition in order that a far more speedy resolution may occur. In addition, this Petition reaches the merits of the entire lawsuit, where the Appeal might only address the Injunction.

issue as to whether or not the contract violates public policy, ruling it does, and dismissing the lawsuit.

IV. MEMORANDUM OF POINTS AND AUTHORITIES

A. THE TRIAL COURT ERRED ON NOT RULING

ON THE ISSUE OF PUBLIC POLICY

A Demurrer not only addresses the Complaint, but all matters that the court can take Judicial Notice of.

The court had before it the contract (p. 74) and its side agreements (pp. 141-144). It further had before it Judge Geernaert's ruling that the contract violated public policy to which the principles of collateral estoppel apply (p. 146).

While it is true that in some instances, testimony, not the language of the contract itself, can reveal the anti-public intent requiring non-enforcement (Brown v. Fries 28 CA 2d 608), in this instance, the anti-public policy intent was clearly stated in the contract.

As to Scientology's appeal of the Breckenridge decision in Armstrong I, paragraph 4b in the settlement agreement stated:

"As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary (C.P. 27)."

Further, the side agreements "fix" the retrial. Scientology limited its damages to \$25,000 (p. 141), and if Armstrong is ordered to so pay, and does, there will be

reimbursement of \$25,000 through Scientology's attorneys to Armstrong's attorney (pp. 143-144).

Paragraph 7D prohibits Armstrong from revealing information or his experiences relating to Scientology or its founder, L. Ron Hubbard (pp. 79-81).

Paragraph 7E required Armstrong from conducting himself wherein he would:

"voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations...Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology (p. 81)."

Paragraph 7H of the settlement agreement required Armstrong not to participate in any litigation involving the Scientology organization unless it was pursuant to subpoena. But in Paragraph 7H, however, the agreement required Armstrong to avoid any service of subpoena by stating that he "shall not make himself amenable to service of any such subpoena (pp. 83-84)."

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¹² In full, Paragraph 7H states:

"[Armstrong] agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. [Armstrong] shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, [Armstrong] agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his family. As provided herein-after in Paragraph 18(d), the contents of this Agreement may not be disclosed."

Paragraph 7I required that any evidence developed during the course of Armstrong I to not exist in the future. It states:

"...in the event of any future litigation...any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party (p. 84)."

Paragraph 10 required Armstrong to

"not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement (p. 86)."

Paragraph 18D required Armstrong not to disclose the contents of the Agreement (p. 88). ¹³

The contract is clearly unlawful, and pursuant to case law set forth below, it may not be enforced, in part or in full. Not only did Judge Sohigian's Preliminary Injunction improperly attempt to separate out and enjoin only portions of it, those portions were also, as set forth below, illegal. Refusal to rule on these issues on Demurrer leaves these illegal orders in force

¹³ The contract also intends to keep tape recordings of Scientologists planning a tax fraud from the Department of Justice. The latter had filed a subpoena with the clerk for the tapes which was the subject of litigation. See U.S. v. Zolin (9th Cir. 1987) 809 F.2d 1411; U.S. v. Zolin (1989) 109 Supreme Court 2619; U.S. v. Zolin 6-20-90 Daily Journal D.A.R. 6890 (Scientology subject to crime-fraud exception to attorney/client privilege.)

for an impermissible length of time threatening the administration of justice in countless litigation. ¹⁴

B. THE CONTRACT IS ILLEGAL

1. A Contract Must Be Lawful To Be Enforced.

The object of a contract must be lawful. (Civil Code Sections 1550, 1596). If the contract has a single object, and that object is unlawful, the entire contract is void. (Civil Code Section 1598).

Civil Code Section 1668 states:

All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Witkin, California Criminal Law (2d. Ed. 1988) Vol. 2, Sections 1132, at p. 1311 states:

It is obviously an obstruction of justice to conceal, suppress, falsify or destroy evidence which is relevant and known to be sought or desired for use in a judicial proceeding or an investigation by law officers.

¹⁴ A Lexis scan will reveal countless Scientology lawsuits. Such a review would also not be complete, as Scientology uses numerous corporations and "front" names in much of its litigation.

An agreement to suppress evidence or to conceal a witness is illegal. (Penal Code Sections 136, 136.1 ¹⁵, and 138). ¹⁶

In his work Equity Jurisprudence (4th Ed. 1918) Sec. 397 at 738, Professor Pomeroy states:

"Whenever a party, who as an actor, sets the judicial machinery in motion to obtain some remedy, has violated conscience, good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.

¹⁵ Penal Code Section 136.1, in part, provides:

"(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a misdemeanor:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony...under any of the following circumstances:...

(2) Where the act is in furtherance of a conspiracy...

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of another person. All parties to such transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of such attempt."

¹⁶ "The general rule controlling in cases of this character is that where a statute prohibits or attaches a penalty to the doing of an act, the act is void...The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded upon such act is void."

(Smith v. Bach 183 Cal. 259, 262, quoted in Severance v. Knight-Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8).

"This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest -- that of the public, whose welfare demands that certain transactions be discouraged."

Public policy has been defined as "anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel free is against public policy." Safeway Stores v. Hotel Clerks Intn'l Assn. (1953) 41 Cal.2d 567, 575, 261 P.2d 252, 254. Therefore, "[a] contract made contrary to public policy may not serve as the foundation of any action, either in law or in equity, [Citation] and the parties will be left where they are found when they come to court for relief. [Citation.]" (Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454, 296 P.2 554).

2. Contract Violates Public Policy.

The intent of the contract has been described by Scientology attorney, Laurie J. Bartilson, as follows:

"what is prohibited is volunteering of information, and agitating trouble..." (Plaintiff's Opposition to Defendant's Demurrer, p. 45).

Public policy prevents contracts to suppress facts from judicial proceedings. Mary R. v. B & R Corporation (1983) 196 CR 781, 149 Cal.App.3d 308 and People v. Dean Richard P'icl 31 Cal. 3d 731, 183 Cal. Rptr. 685, 646, p. 2d 847 (1982).

And in Keystone Co. v. Excavater Co., (1933) 290 US 240, the United States Supreme Court stated (at 247):

"While it is not found, as reasonably as it may be inferred from the circumstances, that from the beginning it was Plaintiffs' intention through suppression of clutter's evidence to obtain decree in the Byers case for use in subsequent infringement suits against these

Defendants and others, it does clearly appear that the Plaintiff made the Byers case a part of its preparation in these suits. The use actually made of that decree is sufficient to show that Plaintiff did not come with clean hands with respect to any cause of action in these cases."

3. The Fact The Contract Was A Settlement Is Irrelevant.

In his partial granting of an Injunction, Judge Sohigian noted the strong policy of enforcing settlements (p. 288), however, the courts have routinely refused to enforce settlement agreements that violate public policy.¹⁷

In Fong v. Miller, 105 Cal. App. 2d 411, 233 p2d 606 (1951) enforcement of such settlements was denied:

"Appellants bitterly complain that the court's action leaves the Respondent unjustly enriched. The complaint is a familiar one, it is generally made by those who, deeming themselves wronged by their companion in illegal ventures, find themselves denied of any right to enforce their unlawful agreements. Their pleas have always been unavailing. This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest -- that of the public, whose welfare demands that certain transactions be discouraged" (at 414-415).

And in Tappan v. Albany Brewing Co., 80 Cal. 570:

"It was contended by the Respondent that this was nothing more than a payment of a sum of money by way of a compromise of litigation, and that such contracts have been upheld. We do not so construe the agreement. It was a promise to pay...for the concealment of a fact from the court and the parties material to the rights of said parties, and which it was her duty to make known. Such a contract was against public policy..."

¹⁷ Judge Sohigian stated his restraints "properly balanced ...protect the interest of the public at large" and are a "reasonable interpretation of the (contract)," and a "fair interpretation of all the cases cited by the parties..." (p. 288). In other words, Judge Sohigian chose to rewrite the contract in attempt to construe it consistent with public policy by granting partial relief. He cannot do so when the contract is on its face is illegal. Further, he misread case law when he enjoined voluntary cooperation, and declaration signing in civil litigation.

Mary R, supra was also a settlement of civil litigation, and Pic'l, supra was an attempt to settle criminal and civil litigation.

C. CONTRACTS TO KEEP WITNESSES FROM TESTIFYING ON BEHALF
OF ADVERSE CIVIL LITIGANTS INCREASE BURDENS AND FINANCIAL
COSTS TO LITIGANTS AND ARE VOID AGAINST PUBLIC POLICY

In ordering his Preliminary Injunction (P. 286), Judge Sohigian refused to enforce any Injunction against adverse governmental litigants, nor enforce the "not amenable to service of process" clauses. He did enjoin Armstrong from voluntarily attending, or testifying for adverse civil litigants, and enjoined him from signing any declarations in civil litigation. In doing so, Judge Sohigian failed to see that public policy is served by administration of civil justice, as well as criminal. Judge Horowitz's refusal to rule (p. 424) on these issues on Demurrer leaves Judge Sohigian's impairments of the civil system intact. Not only does this threaten cases involving Scientology, but if adopted by the defense bar as a practice, and if not quickly resolved, it threatens the civil system.

These results may occur:

a. Law and motion or injunctive relief is sought. The responding party lacks time for deposition, so needs from Armstrong a Declaration to supply relevant information. The Injunction prohibits it.

b. Armstrong voluntarily attends a trial. Counsel for adverse Scientology litigant spots him and calls him to the stand. The Scientology lawyer interjects, "Mr. Armstrong, if you answer, we will go back to Judge Sohigian and ask you be held in contempt as you were not subpoenaed." The trial judge says, "Mr. Armstrong, if you fail to answer, I will hold you in contempt."

c. An adverse Scientology litigant outside California learns of Armstrong's existence prior to trial. Armstrong cannot

be subpoenaed to attend a trial out of state, so adverse litigant loses a witness.¹⁸

d. An adverse litigant calls Armstrong to the stand. He is questioned for multiple days because the attorney does not know what Armstrong has to say due to the Injunction.¹⁹

e. Unable to interview Armstrong in private, adverse litigants will have to depose him for multiple days at great expense with Scientology attorneys looking over their shoulders, objecting to each question, and perhaps going to court for protective orders and arguments.

f. To combat an upcoming motion, an adverse litigant takes a quick deposition of Mr. Armstrong on a few points. Later, when more information is needed, the litigant faces the "one-deposition" rule.

At best, Scientology purchased hinderance and expense for any adverse litigant. Public policy is violated by contracts intended to so hinder adverse litigant to present his case.

Our civil system is more than just redress. It is a fact-finding tool, laying precedents for our lives, businesses, and affairs. It governs product liability, due care, and safety. Statutes provide civil liabilities to deter violations. To enforce public policy and deterrence, we have punitive damages. "Class actions" help large segments of the public. Civil litigation presents safeguards and warnings against individuals, civil, and governmental entities.²⁰

¹⁸ A deposition adds greatly to expense of litigants. Nor is a video-taped deposition as effectual as a live witness.

¹⁹ The court, most assuredly, would ask why the witness was not interviewed. "Well, your Honor, we tried, but he was paid money not to speak to us, and there is an Injunction. We are sure he has relevant testimony, we just don't know what it is."

²⁰ Judge Sohigian's Injunction (p. 288) is vague. Does the Injunction apply to governmental agency in a civil action? Why should a private individual be exposed to hinderance and increased expenses, but not a governmental agency?

Injunction increases trial court burdens and taxpayer costs. Even when insurance, increased defense costs equate to higher premiums, particularly if adopted by the defense bar.

D. CASE LAW MAKES NO DISTINCTION BETWEEN CIVIL AND CRIMINAL

Scientology argues Mary R., supra is inapplicable as it involved a governmental agency.²¹ As the BMQA needs to investigate, so does a civil litigant. The court called the gag order "giving judicial stamp of approval to a ploy... " at 316. Its ruling was beyond regulatory agencies:

"The stipulated order of confidentiality is contrary to public policy, contrary to the ideal that full and impartial justice shall be secured in every matter...we believe it clearly improper, even on stipulation of the parties, that the court should issue an order designed not to preserve the integrity and efficiency of the administration of justice...such a stipulation is against public policy, similar to an agreement to conceal judicial proceedings and to obstruct justice. Moreover, in light of the statutory obligation of division to investigate... "

The "moreover" phrase indicates the court thought the statutory obligation was additive to the prohibition.

As to People v. Dean Richard Pic'l 31 Cal. 3d 731, 183 Cal. Rptr. 685, 646, p. 2d 847 (1982), Scientology states it applies only to criminal actions. The subject agreement, as the herein contract, required avoidance. The court found the agreement one to refuse to testify by doing "everything within my power..."

"There is, of course, no talismanic requirement that a Defendant must say 'don't testify' or words tantamount thereto ... as long as his words or actions support the inference that he... sought to prevent or dissuade a potential witness from attending upon a trial... a Defendant is properly held to answer (citations)" (at 740).

²¹ This contract also prohibits contact with governmental agencies. See paras. 7(e), 7(g), and 10 (pp. 81-86).

In Pic'l, the crime was a "bribe" to "dissuade" a party from attending (at 737). This case did arise in the context of a criminal prosecution, but Penal Code Sec. 138 makes it a crime to form "any understanding or agreement" a person shall "not attend" trial. The Penal Code applies to any trial or judicial proceeding, not just criminal. ²²

Brown v. Fries, 28 CA. 2d 608 involved civil litigation. The agreement required to "remain faithful to her duties as a friend," meaning not to reveal information reflecting on the "honesty and integrity" of a deceased husband. Citing Restatement of Law of Contracts, Sec. 557:

"A bargain that has for its consideration the non-disclosure of discreditable facts... is illegal" (at 618).

Williamson v. Superior Court (1987) 21 Cal.3d 829 148 CR 39 stated agreements to suppress evidence are void against public policy (at 836). The court referred to Penal Code, but this case arose in a civil context. The Supreme Court stated:

"[enforcement] would be to condone defendant's concealment of evidence, in direct contravention of this court's insistence that neither party to such an agreement should receive the aid of the court in effectuating such an illegal scheme. This court cannot place its imprimatur upon planned stratagems of purchased suppression of evidence (at 838)."

²³

Allen v Jordanos, 852 CA 3d 160, involved a settlement wherein plaintiff was laid off, but with benefits. Defendants

²² Similar language exists in 18 U.S. Ca., Sec. 201(b) (3); 18 U.S. Ca., Sec. 201 (c) (2); Penal Code, Sec. 136.1.

²³ In out-of-state litigation, where Defendant cannot be subpoenaed, his testimony is completely suppressed. At the very best, an adverse litigant's ability to use Armstrong is hindered and made more expensive. Such "stratagems" cannot be endorsed by this court.

agreed not to communicate to "third persons, including prospective employers," that plaintiff was dishonest, etc. The complaint stated, "communicating to numerous persons, including prospective employers... (at 165)". A bargain to prevent non-disclosure of discreditable facts is illegal (at 166). ²⁴

E. THE POWER TO SUBPOENA

Scientology argues no obstruction because a witness can be subpoenaed. A defendant in litigation has a constitutional right to a fair trial, to interview witnesses who want to be interviewed. ²⁵

What if Scientology went to witnesses and said, "Here's \$10,000 each to get out of town." Is it less an obstruction because defendants have subpoena power? Does it matter the obstruction is part of a settlement?

That the contracts say Armstrong may testify when subpoenaed (but avoid process), is surplusage. Even if the agreement said, "You cannot testify," Scientology does not have power to override a subpoena. In cases cited, the witness always

²⁴ Scientology cites Wakefield v. Church of Scientology of California (pp. 40-41) [1978] 21 Cal.Ed 829, 148 Cal.Rptr.39 and McLean v. Church of Scientology of California (11th Cir. 1991) neither case describes the language involved, nor is a slip opinion citable.

²⁵ Judge Geernaert also noted the vagueness of requirement not to be amenable to service, stating (Exh. F, p. 22):

"... but I'll put it ⁵³this way -- does that mean that if I were to issue an injunction, then we could have a contempt hearing if he was at a restaurant and the process server came in and he didn't jump up and run away?

It is a concept that I feel uncomfortable putting into an order, even though the parties put it into their agreement (p. 170)."

still could have been subpoenaed. It was an obstruction to agree "to do everything you can" to avoid testifying.

F. PLAINTIFF IS ESTOPPED

The contract (para. 20) provided the court in Armstrong I to decide these issues (pp. 88-89). Thus the contract was to be approved by Judge Breckenridge. On December 23, 1992, Scientology went before Judge Geernaert in Armstrong I, who made a finding that Scientology, despite orders to do so, did not provide the settlement contract to Judge Breckenridge, as ordered, thus preventing contract from being enforced (pp. 196-224). After denial, Scientology filed this action.²⁶ Scientology should not reap profit from its error by proceeding with this more expensive action. Second, Judge Geernaert ruled the contract violated public policy (p. 200).

G. CONTRACT CANNOT BE REWRITTEN

If a contract has a single object, and that object is unlawful, the entire contract is void. C.C. 1598

To enforce part of an illegal contract it must be looked to see if the agreement is "entire or separable." The key is if money consideration is apportioned to each of many items to be formed. Brown, supra:

"Whether a contract was entire or separable depends upon its language and subject matter, and this question is one of construction to be determined by the court

²⁶ Department 1 originally sent this case back to Judge Geernaert as a "related" case, but Scientology filed a 170.6 (p. 63, footnote 19).

according to the intention of the party." ²⁷

It is essential a contract has a lawful object. C.C. 1596. If there is a single unlawful object, it is void. C.C. 1598. If any part of the consideration is unlawful, it is void. C.C. 1608. Only when a contract has clearly severable stipulations for each of which there is a separate consideration expressed, and there is no reason to suppose the expressed consideration for one form a part of consideration for the other, can the contract be separated. 14 Cal.Jur.3d, Contracts, p. 336; McVicker v. McKenzie, 136 Cal. 656. Only if the court can lay illegal consideration to a specific portion of the contract may it enforce other parts. Keene v. Harling, 61 C.2d 318. Thus, Judge Sohigian's break down was improper.

H. FREE SPEECH

The United States Supreme Court has stated that "prior restraints on speech and publication are the least tolerable infringement on First Amendment rights." Nebraska Press Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns (1976) 427 U.S. 347, 373-74, 49 L.Ed. 2d 547; C.B.S., Inc. v. U.S. District Court (9th Cir. 1984) 729 F.2d 1174, 1177. "Under our constitutional system prior restraints, if permissible at all, are permissible only in the most extraordinary of circumstances." Id., 729 F.2d at 1183. Therefore, prior

²⁷ Another intention was to rig the appeal in Armstrong I, and then proceed with a "set-up" trial after reversal. See discussion, infra.

restraint on expression comes with a "heavy presumption" against constitutional validity. Organization for a Better Austin v. Keefe (1971) 402 U.S. 415, 491.

"Even where individuals have entered into express agreements not to disclose certain information, either by consent agreement [citation]; or by an employment contract and secrecy oath [citation], the courts have held that judicial orders enforcing such agreements are prior restraints implicating First Amendment rights."

In re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

I. CONCLUSION

As in Fong, supra, Scientology complains bitterly that it will lose the benefit of its bargain if the Demurrer is sustained. But what does Scientology lose? That a witness testifies under oath, without having first been subpoenaed? That adverse litigants can prepare their cases? That economic burdens have not been increased on Scientology adverse litigants? That a trier of fact, in civil or criminal litigation, receives relevant information? To allow persons to pay witnesses to not voluntarily testify in litigation, sign declarations, be interviewed by adverse litigants, is clearly intended to impede the right to a fair trial. If we allow it, such language may soon appear universally in all settlement agreements. If so, Justice will be indeed blind.

PRAYER

Petitioner prays that this court:

1. Issue an order to Respondent court and to the parties ordering the trial court to rule as to whether or not the subject contract violates public policy.

2. Issue an order to Respondent court to rule that the subject contract and its side agreements violate public policy and to dismiss the action.

3. Issue an order to Respondent court to dissolve the Preliminary Injunction.

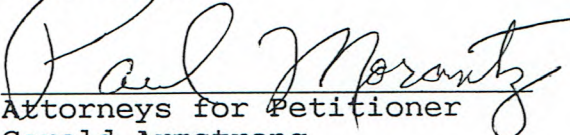
4. Award Petitioner his costs of petition; and,

5. Grant such other and further relief as may be just and proper.

Date: July 11, 1992

Respectfully submitted,

PAUL MORANTZ
FORD GREENE



Attorneys for Petitioner
Gerald Armstrong

VERIFICATION

I am one of the attorneys for Petitioner in the Superior Court action in this writ proceeding. I am more familiar with the record and proceedings in the Superior Court than is the individual Petitioner. I have drafted and read the foregoing Petition for issuance of a writ of mandate, stay order and other appropriate relief and I certify on the basis of personal knowledge that its allegations are true.

Executed on July 11, ^{1992,} at Pacific Palisades, California.

I declare under penalty of perjury that the foregoing is true and correct.


Paul Morantz